IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4796 OF 2005

Jagannath Bansilal Vija & Anr. ...Applicants
vs.
State of Maharashtra ...Respondent

Mr.M.P.Vyas with Mr.S.R.Singh for the Applicants
Ms M.M.Deshmukh, A.P.P. for State
Mr.M.S.Mohite for the complainant

CORAM: A.S.OKA,J.
DATE : AUGUST 8,2005

P.C.:

1. Heard Advocate for the Applicant, learned A.P.P. for State and Shri Mohite for the original complainant.

2. This is an application for anticipatory bail. An offence has been registered against the Applicants at Chember Police Station under Sections 409, 465, 468, 471 read with section 34 of the I.P.C.

3. In the F.I.R. filed by the Manager of the complainant, it is stated that the Applicants were working as agents of M/s.Action Construction Equipment Pvt.Ltd. The case made out in the F.I.R. is that the said company was manufacturing cranes. The Applicants were acting as selling agents of the cranes manufactured by the said company and they were regularly paid commission by the said company. The case of the first informant is that it was realised that after cranes

were sold to certain companies and parties through the Applicants, the company did not receive any amount by way of advance or the price of the cranes and when the purchasers were contacted, the first informant learnt that the Applicants have taken amounts from the purchasers. The allegations in short are pertaining to following transactions :

(1) Two cranes were sold to Setia Crane Hiring Company in District Raigad through the Applicant. The allegation against the Applicants is that they fabricated a letter of Action Construction Equipment Pvt.Ltd and obtained a cheque of Rs.1,35,900/- in the name of their company and deposited the same in their own bank account.

(2) In case of sale of a crane to Viraj Alloys Pvt.Ltd., Tarapore they affixed a label on the purchase order and obtained a sum of Rs.2,36,250/- from the purchaser and deposited the same in their account.

(3) In case of sale of crane to M/s. Seeyen Engineering, district Bellari, Karnataka a demand draft of Rs.6,50,000/- drawn in favour of the company was taken by the applicants and was not handed over by them to the company.

(4) Out of the price of the two cranes sold to M/s. Gammon India Ltd., Mumbai the Applicants obtained a cheque in the sum of Rs.12,63,600/- in the name of the said company and they did not hand over the said cheque to the company.

(5) In case of sale of crane to M/s.Milan Transport, Panvel the Applicants obtained a cheque in the sum of Rs.5,92,500/- and have retained the said cheque.

4. The allegation in the F.I.R. is that the Applicants fabricated the documents and have misappropriated a sum of Rs.28,78,250/-.

5. The learned Counsel for the Applicants submitted that the dispute between the Applicants and the complainant is basically a dispute regarding settlement of the accounts. He pointed out that a sum Rs.1,35,900/- and a sum of Rs.2,36,250/- have been deposited by the Applicants in the account of the said company of the first informant. The learned Counsel for the Applicants stated that the Applicants are in possession of the demand draft in the sum of Rs.6,50,000/- as well as a cheque in the sum of Rs.5,92,500/- and the Applicants are ready and willing to hand over the same to the complainant. The Applicants have tendered an Affidavit today stating that a cheque in the sum of Rs.12,63,500/-

issued by Gammon India Ltd. is not in their possession. He submitted that considering the aforesaid circumstances, this is not a case where custodial interrogation of the Applicant is required.

6. The learned A.P.P. submitted that the allegation against the Applicants are of very serious nature requiring custodial interrogation. The learned A.P.P. on instructions stated that till 21st July 2005, a cheque in the sum of Rs.12,63,500/- dated 31st January 2005 issued in the name of Action Construction Equipment P.Ltd. was not encashed. Shri Mohite appearing for the original complainant has placed reliance on the Affidavit in reply filed in the Sessions Court and in this Court. He submitted that serious allegations of fabrication of documents and misappropriation have been made against the Applicants which are supported by the prima facie material on record. He submitted that sum of Rs.1,35,900/- and Rs.2,65,250/- have been credited to the account of company of the complainant only on 2nd May 2005 without the knowledge of the first informant. He submitted that custodial interrogation of the Applicants is required.

7. I have considered the submissions. The learned Sessions Judge while rejecting the application of the Applicants observed that three cheques have been withheld by the Applicants. He observed that the original complainant has not

settled the account of the Applicants and it was for the Applicants to adopt appropriate proceedings and the cheques could not have been withheld. He observed that prima facie, the complainant wanted to cause loss to the Applicants as regards three cheques. It does appear that there is a dispute between the applicant and the complainant regarding settlement of the accounts. Now, it is an admitted position that the company-original complainant have received the sums of Rs.1,35,900/- and Rs.2,36,250/-. The learned Counsel for the Applicants has today handed over banker's cheque in the sum of Rs.6,50,000/- dated 20th January 2005 to the learned Advocate for the complainant along with a demand draft in the sum of Rs.5,92,500/- dated 22nd February 2005. In the Affidavit which is filed today, the Applicants have stated thus :

"1. We say that the cheque No.504465 dated 31-1-2005 for Rs.12,63,600/- issued by Gammon India Ltd.,Mumbai drawn on IDBI Ltd.,Nariman Point Branch, Mumbai in favour of the complainant is not in our possession and if it is found we shall not encash it and hand it over to the complainant.

2. We say that we shall not encash any other cheque issued by any customer of ACE (Complainant) in their favour or obtain any other cheque issued on account of their business transaction from any of their

customers. Hence this affidavit."

The statements made in the Affidavit which are quoted above are accepted.

8. After considering the material on record, the affidavit of the Applicant and the aforesaid facts and circumstances of the case, in my view, custodial interrogation of the Applicants is not required. However, their presence for the purposes of investigation is required to be secured.

9. Hence I pass the following order :

i) In the event of the arrest of the Applicants in connection with C.R.No.254 of 2005 registered with Chembur Police Station, the Applicants shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.25,000/- (Rupees twenty five thousand) each with one or two sureties in the like amount.

ii) The Bail is granted subject to condition that the Applicants will attend the concerned Police Station for 15 days commencing from 10th August 2005 between 5 p.m. to 6 p.m. on every day and will cooperate for the purposes of investigation. Thereafter, the Applicants will attend the

concerned Police Station as and when called upon to do so till filing of the charge sheet.

iii) The Bail is granted subject to condition that the Applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/investigating agency. The Applicant shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) This order will enure to the benefit of the Applicants only till charge sheet is filed. Thereafter, he will be free to apply to the appropriate Court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE